
SECOND SUBSTITUTE HOUSE BILL 1492

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Williams, B. Sullivan, Eickmeyer and Orcutt; by request of Commissioner of Public Lands)

READ FIRST TIME 02/28/05.

1 AN ACT Relating to the department of natural resources' authority
2 to create a single pilot mitigation bank on state-owned aquatic lands;
3 reenacting and amending RCW 43.79A.040; and adding a new chapter to
4 Title 79 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the existing
7 state and federal regulatory framework for wetland and aquatic resource
8 mitigation is an important tool used to offset impacts to aquatic
9 lands.

10 (2) The legislature further finds that because impacts to wetlands
11 and aquatic resources often affect state-owned aquatic lands, the
12 department should work within established state and federal regulatory
13 mitigation processes to develop a single pilot mitigation bank on
14 state-owned aquatic lands.

15 (3) The intent of this chapter is to establish the proprietary
16 mechanisms for the department to develop, implement, and manage a
17 single pilot mitigation bank on state-owned aquatic lands. Additional
18 authority will be needed if the department seeks to establish more than
19 one mitigation bank.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Compensatory mitigation" means the process of restoring,
4 creating, enhancing, or, in exceptional circumstances, preserving
5 wetlands, other aquatic resources, or uplands for the purposes of
6 compensating for the unavoidable adverse environmental impacts of a
7 project that remain after all appropriate and practicable avoidance and
8 minimization has been achieved.

9 (2) "Credit" means a unit of trade representing the increase in the
10 ecological value of a site due to improvements made to the habitat
11 conditions of the site, as measured by acreage, functions, or values,
12 or by some other regulatory approved assessment method.

13 (3) "Department" means the department of natural resources.

14 (4) "Mitigation" means the sequential process of avoiding impacts,
15 minimizing impacts, and compensating for the remaining unavoidable
16 impacts of a project.

17 (5) "Mitigation bank" means a site or sites where wetlands, aquatic
18 resources, or uplands are restored, created, enhanced, or in
19 exceptional circumstances, preserved expressly for the purpose of
20 providing compensatory mitigation in advance of authorized project
21 impacts to similar resources.

22 (6) "Mitigation banking agreement" means a legal agreement between
23 the department and a public or private entity under which the parties
24 to the agreement agree to jointly develop, implement, and manage a
25 single pilot mitigation bank that is located on state-owned aquatic
26 lands and is approved through state or federal regulatory mitigation
27 processes.

28 (7) "Mitigation banking partners" means public or private entities
29 with which the department has entered into a mitigation banking
30 agreement under section 3 of this act.

31 (8) "Project" means a physical construction project that develops
32 or redevelops land in a way that results in unavoidable adverse
33 environmental impacts that remain after all appropriate and practicable
34 avoidance and minimization has been achieved.

35 (9) "Site" means a mitigation bank site, or a site where
36 compensatory mitigation has or will occur.

1 NEW SECTION. **Sec. 3.** (1) The department may enter into mitigation
2 banking agreements with public or private entities to develop,
3 implement, and manage a single pilot mitigation bank that is located on
4 state-owned aquatic lands and is approved through state or federal
5 regulatory mitigation processes. A mitigation banking agreement must
6 establish the business relationship between the department and its
7 mitigation banking partner, clearly identifying the assets each entity
8 will contribute to the pilot mitigation bank project. The agreement is
9 not subject to the provisions of RCW 79.90.480 or 79.90.500.

10 (2) The department and its mitigation banking partners must develop
11 and adopt a management plan, for the pilot mitigation bank, that is
12 approved through state or federal regulatory mitigation processes and,
13 if applicable, by the city or county in which the aquatic lands are
14 located. The department must work cooperatively with other applicable
15 public agencies, affected federally recognized tribes, or private
16 entities in the development of the management plan, or in the
17 establishment of specifications for the plan. The department and its
18 mitigation banking partners are responsible for expenses incurred in
19 the development of the management plan. All management plans adopted
20 under this section must include:

21 (a) An identification of the wetlands, other aquatic resources, or
22 uplands and their associated ecological and recreational functions,
23 that will be improved and protected on the pilot mitigation bank site;

24 (b) Details for the creation, restoration, enhancement, or
25 preservation of the wetlands, other aquatic resources, or uplands on
26 the pilot mitigation bank site;

27 (c) Details of the long-term management actions that will occur on
28 the site, when the actions will occur, and where those actions will
29 occur within the site; and

30 (d) Details on the amount of funding necessary for the long-term
31 management endowment and details as to how the amount was calculated
32 under section 4 of this act.

33 (3) The service area for the pilot mitigation bank must be based on
34 the geographic and functional connectivity of the pilot mitigation bank
35 site with the impacting project sites, which must be determined and
36 approved through state or federal regulatory mitigation processes.

37 (4) Consistent with state and federal regulatory mitigation
38 processes, state-owned aquatic lands utilized as the pilot mitigation

1 bank will not be available for other uses that will change the intent
2 of the site as a mitigation site or compromise the ecological functions
3 of the site.

4 (5)(a) The department may sell mitigation bank credits generated
5 from the pilot mitigation bank and receive revenues from the sale of
6 mitigation bank credits generated from the pilot mitigation bank that
7 have been sold by its mitigation banking partners.

8 (b) The department and its mitigation banking partners must
9 determine the economic value of the mitigation bank credits for the
10 pilot mitigation bank. The economic value of the mitigation bank
11 credits will not be subject to the provisions of RCW 79.90.480 or
12 79.90.500. The department and its mitigation banking partners must
13 sell the credits for no less than market value, as determined using
14 appropriate mitigation credit market appraisal techniques. The
15 economic value of the mitigation bank credits may include the costs
16 associated with the habitat improvements made to the site and the value
17 associated with the use of state-owned aquatic lands for the mitigation
18 bank.

19 (c) All moneys received by the department from the sale of
20 mitigation bank credits generated from the pilot mitigation bank, in
21 excess of a long-term management endowment created in section 4 of this
22 act and in excess of the revenues to mitigation banking partners, must
23 be deposited according to RCW 79.90.245 and 79.64.040, and paid to
24 towns according to RCW 79.92.110.

25 NEW SECTION. **Sec. 4.** (1) The department or its mitigation banking
26 partners will create an endowment for the purpose of generating funds
27 that are to be used for the long-term monitoring, maintenance, and
28 management of the pilot mitigation bank.

29 (2) The department or its mitigation banking partners will assume
30 long-term management responsibility for the pilot mitigation bank after
31 the amount of money necessary to establish the endowment that will
32 adequately cover the costs of long-term monitoring, maintenance, and
33 management is determined by the department, documented in the
34 management plan, and approved through state or federal regulatory
35 mitigation processes.

36 (3) The amount of money necessary to establish the endowment must

1 be based on the specific conditions of the pilot mitigation bank site
2 and the long-term management plan for the site, as approved through
3 state or federal regulatory mitigation processes.

4 (4)(a) If the department assumes the long-term management
5 responsibility for the pilot mitigation bank, the revenue from the sale
6 of mitigation bank credits generated to establish the endowment must be
7 deposited into the aquatic lands compensatory mitigation endowment
8 account established in section 5 of this act.

9 (b) The department must keep separate accounting records for moneys
10 received into the aquatic lands compensatory mitigation endowment
11 account from the sale of mitigation bank credits to ensure that funding
12 for long-term management is fully secured and expended as approved
13 through state or federal regulatory mitigation processes.

14 NEW SECTION. **Sec. 5.** (1) The aquatic lands compensatory
15 mitigation endowment account is created in the custody of the state
16 treasurer. All receipts from moneys received by the department for the
17 purpose of creating a long-term management endowment under section 4 of
18 this act must be deposited into the account.

19 (2) The moneys in the account must be invested for the benefit of
20 the pilot mitigation bank site that the department has agreed to manage
21 under this chapter.

22 (3) The account must be administered by the state investment board.
23 The principal of the account is irreducible. Disbursements from the
24 account in an amount equal to the site management costs for the pilot
25 mitigation bank, adjusted annually by the inflation rate, must be
26 deposited into the aquatic lands compensatory mitigation management
27 account, created in section 6 of this act, upon authorization of the
28 commissioner of public lands and the director of the state investment
29 board, provided the principal of the compensatory mitigation endowment
30 account is not reduced. Allocations to the state investment board
31 expense account under RCW 43.33A.160 may also be made from this
32 account.

33 NEW SECTION. **Sec. 6.** (1) The aquatic lands compensatory
34 mitigation management account is created in the custody of the state
35 treasurer. The account will receive revenues from the aquatic lands

1 compensatory mitigation endowment account as described in section 5 of
2 this act.

3 (2) The moneys in the account must be used solely by the department
4 for the purpose of performing long-term monitoring, maintenance, and
5 management of the pilot mitigation bank site that is located on state-
6 owned aquatic lands. Only the commissioner of public lands or the
7 commissioner's designee may authorize expenditures from the account.
8 The account is subject to allotment procedures under chapter 43.88 RCW,
9 but an appropriation is not required for expenditures.

10 NEW SECTION. **Sec. 7.** The purchase and sale of mitigation bank
11 credits, generated by the single pilot mitigation bank authorized in
12 this chapter, are to be voluntarily agreed to by the department and
13 public or private third-party entities that are required to fulfill
14 regulatory compensatory mitigation obligations. Mitigation credits
15 made available through the pilot mitigation bank should be one of
16 several options for third parties to meet their regulatory compensatory
17 mitigation obligations. The department may not require a third party
18 to buy mitigation credits from the pilot mitigation bank as a condition
19 to use state-owned aquatic lands. If a third party agrees through the
20 regulatory mitigation process to purchase credits from the pilot
21 mitigation bank to fulfill its compensatory mitigation obligations for
22 impacts to state-owned aquatic lands, the third party must complete the
23 purchase prior to the department issuing a use authorization for the
24 impacting project.

25 NEW SECTION. **Sec. 8.** Nothing in this chapter affects the
26 authority of the department to exchange, sell, or transfer jurisdiction
27 of state-owned tidelands and shorelands or accept gifts of aquatic
28 lands under RCW 79.90.457, 79.90.580, or 79.90.475 except that state-
29 owned aquatic lands used for the pilot mitigation bank will not be
30 transferred out of state ownership and control.

31 NEW SECTION. **Sec. 9.** By December 31, 2010, the department must
32 provide a report to the appropriate committees of the senate and house
33 of representatives that provides the status of the pilot mitigation
34 bank in regards to regulatory certification, management plan

1 development, service area determination, credit determination,
2 valuation, and sale, and endowment fund creation and expenditure.

3 **Sec. 10.** RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are
4 each reenacted and amended to read as follows:

5 (1) Money in the treasurer's trust fund may be deposited, invested,
6 and reinvested by the state treasurer in accordance with RCW 43.84.080
7 in the same manner and to the same extent as if the money were in the
8 state treasury.

9 (2) All income received from investment of the treasurer's trust
10 fund shall be set aside in an account in the treasury trust fund to be
11 known as the investment income account.

12 (3) The investment income account may be utilized for the payment
13 of purchased banking services on behalf of treasurer's trust funds
14 including, but not limited to, depository, safekeeping, and
15 disbursement functions for the state treasurer or affected state
16 agencies. The investment income account is subject in all respects to
17 chapter 43.88 RCW, but no appropriation is required for payments to
18 financial institutions. Payments shall occur prior to distribution of
19 earnings set forth in subsection (4) of this section.

20 (4)(a) Monthly, the state treasurer shall distribute the earnings
21 credited to the investment income account to the state general fund
22 except under (b) and (c) of this subsection.

23 (b) The following accounts and funds shall receive their
24 proportionate share of earnings based upon each account's or fund's
25 average daily balance for the period: The Washington promise
26 scholarship account, the college savings program account, the
27 Washington advanced college tuition payment program account, the
28 agricultural local fund, the American Indian scholarship endowment
29 fund, the students with dependents grant account, the basic health plan
30 self-insurance reserve account, the contract harvesting revolving
31 account, the Washington state combined fund drive account, the
32 Washington international exchange scholarship endowment fund, the
33 developmental disabilities endowment trust fund, the energy account,
34 the fair fund, the fruit and vegetable inspection account, the future
35 teachers conditional scholarship account, the game farm alternative
36 account, the grain inspection revolving fund, the juvenile
37 accountability incentive account, the law enforcement officers' and

1 fire fighters' plan 2 expense fund, the local tourism promotion
2 account, the produce railcar pool account, the rural rehabilitation
3 account, the stadium and exhibition center account, the youth athletic
4 facility account, the self-insurance revolving fund, the sulfur dioxide
5 abatement account, the children's trust fund, the Washington horse
6 racing commission Washington bred owners' bonus fund account, the
7 Washington horse racing commission class C purse fund account, (~~and~~)
8 the Washington horse racing commission operating account (earnings from
9 the Washington horse racing commission operating account must be
10 credited to the Washington horse racing commission class C purse fund
11 account), the aquatic lands compensatory mitigation endowment account,
12 and the aquatic lands compensatory mitigation management account.
13 However, the earnings to be distributed shall first be reduced by the
14 allocation to the state treasurer's service fund pursuant to RCW
15 43.08.190.

16 (c) The following accounts and funds shall receive eighty percent
17 of their proportionate share of earnings based upon each account's or
18 fund's average daily balance for the period: The advanced right of way
19 revolving fund, the advanced environmental mitigation revolving
20 account, the city and county advance right-of-way revolving fund, the
21 federal narcotics asset forfeitures account, the high occupancy vehicle
22 account, the local rail service assistance account, and the
23 miscellaneous transportation programs account.

24 (5) In conformance with Article II, section 37 of the state
25 Constitution, no trust accounts or funds shall be allocated earnings
26 without the specific affirmative directive of this section.

27 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act constitute
28 a new chapter in Title 79 RCW.

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